

UNITED STATES COURT OF APPEALS

APR 9 1997

TENTH CIRCUIT

PATRICK FISHER
Clerk

LOWELL EDWARD JACKSON, JR.,

Petitioner - Appellant,

v.

G. L. HERSHBERGER, Warden,

Respondent - Appellee.

No. 96-1406
(D.C. No. 96-S-1309)
(District of Colorado)

ORDER

Before **SEYMOUR**, Chief Judge, **PORFILIO**, and **MURPHY**, Circuit Judges.

Lowell Edward Jackson, a federal prisoner, appeals from an order dismissing his pro se 28 U.S.C. § 2241 habeas corpus action. The district court's order was based on Mr. Jackson's failure to pay the partial filing fee of \$5.00 ordered by the district court or to show cause why he was indigent or has no means to pay the fee. On appeal, Mr. Jackson argues he is indigent and the district court was without authority to order him to pay the partial fee. Unfortunately for appellant he is wrong.

In 1996, Congress passed an amendment to 28 U.S.C. § 1915 under which the district court was required to assess a partial payment of the filing fee even though it had found Mr. Jackson was unable to prepay the entire filing fee. 28 U.S.C. § 1915(b)(1). Had Mr. Jackson filed the affidavit the district court requested many times of him, he

could have proceeded without payment of the partial fee. § 1915(b)(4). He did not comply with any of those requests, however, and his action was properly dismissed without prejudice. This dismissal permits Mr. Jackson to refile his petition if he complies with the requirements of § 1915(b).

Because appellant has filed with this court a request for a “remand” and agreed to pay the \$5.00 fee in the district court, this appeal is **DISMISSED**. The remand shall issue forthwith.

ENTERED FOR THE COURT

John C. Porfilio
Circuit Judge